

Minutes of the First Meeting of the Special Commission on Facial Recognition- April 16, 2021

Commissioners Present

Commissioner Rogers
Commissioner Woodward
Commissioner Hartzog
Commissioner Dyson
Senator Gomez- Lauren Matteoda on behalf of Senator Gomez
Commissioner Creem
Commissioner Brooks
Commissioner Cordy
Commissioner Rebello-Paradas
Commissioner Farnsworth
Commissioner Ogilvie
Commissioner Learned Miller
Commissioner Range
Commissioner Crockford
Commissioner Spurlock
Commissioner Verma
Commissioner O'Keefe
Commissioner Conley

Commissioners Absent

Commissioner NKonde

Representative Day confirmed with Seamus Corbett from the State House Legislative Information Services that the meeting was broadcasted on malegislature.gov and began the meeting on 4/16/21 at 11AM with a unanimous roll call.

Representative Day calls the first meeting of the Special Recognition on Facial Recognition to order at 11AM on 4/16/21.

Representative Day makes introductory remarks and introduces Senator Jamie Eldridge, co-chair of the Special Commission on Facial Recognition and the Joint Committee on the Judiciary.

Senator Eldridge makes introductory remarks.

Representative Day opens the meeting by asking Patrick Prendergast, Chief of Staff in the Office of Representative Day, the calling of the roll of the members.

Patrick Prendergast introduces the calling of the roll of the members.

Representative Day introduces his staff members who will be keeping minutes of these meetings and says they will be of service to all members.

Senator Eldridge introduces his staff members.

Representative Day notes the large size of the commission with upwards of 20 folks. Representative Day does a quick introduction, and states how impressed he is that each member has chosen to serve on the commission and is grateful for everyone's partnership considering their distinct backgrounds.

Representative Day introduces all commission members and provides brief biographies.

Representative Day says that agenda item 1 has been completed and notions to move into agenda item 2: the legislative commission parameters and the adoption of protocols, unless any commission members have anything they would like to add.

Commissioner Creem mentions that this is an impressive group and is honored to be a part of it. Commissioner Creem requests that a snapshot of the commission members and their biographies be shared with the group.

Representative Day notes that this has been completed and will be displayed when the commission website is shared. Representative Day continues to move into agenda item 2: The review of Legislative Commission Parameters and suggested adoption of protocols. Representative Day states that this is a special commission chaired by legislators who are the judiciary committee chairs in both the House and Senate and governed by the General Laws of the Commonwealth. While these rules and statutes empower us with broad authority to collect information in pursuit of meeting our charge, we are tasked with certain responsibilities as a commission. Chief among those is the requirement of Joint Rule 29 A, to maintain an open process which will provide members of the public with the opportunity to view, and sometimes participate, in our deliberations.

Representative Day asks Jacqui Manning, staff member in the Office of Representative Day, to share her screen and display Joint rule 29A.

Representative Day continues by mentioning that today's meeting has been noticed on the State Legislature website and is also being livestreamed there. Representative Day states that he looks forward to when the commission can meet in person, but that virtual meetings provide an opportunity for us to record our meetings. Representative believes that recording will prove to not only be a useful tool for the commission, but also for members of the public who are viewing and taking an interest.

Representative Day entertains a motion to make and post recordings, starting with today's meeting and going forward.

Commissioner Dave Rogers makes the motion to record our proceedings.

The motion is seconded.

Patrick Prendergast, staff member in the office of Representative Day, calls the roll in an expedited fashion.

The roll is called and unanimously approves to record proceedings.

The motion carries.

Representative Day notes that in pursuit of our charge the commission is going to request documentation, presentations, and a variety of sources to be discussed moving forward. The materials will be posted public. In advance of today's kick off, Representative Day notes he has directed his staff to create a website that's going to serve as the main repository for our meeting recordings, agendas, minutes. Representative Day asks Jacqui Manning, staff member in the office of Representative Day, to share her screen to show commission members the website.

Jacqui Manning displays the website for the Special Commission on Facial Recognition.

Representative Day asks if there are any discussions or questions on the website. No questions were raised to Representative Day.

Representative Day notes the charge states that the first meeting of the Special Commission on Facial Recognition to occur by February 15, and notes that it is now mid April. Representative Day explains that the COVID challenges prevented the committee from meeting the initial deadline but is very confident of meeting the reporting deadline of December 31, 2021.

Representative Day requests that commission members reserve the third Friday of every month as a placeholder for future meetings, and that all meetings date decisions will be made as a group. Representative Day asks if there are any comments or questions. No questions were raised to Representative Day.

Representative Day motions to move to agenda item three and asks Senator Eldridge to read the charge of the Special Commission on Facial Recognition.

Senator Eldridge reads the charge, Section 105 of Chapter 253 of the Acts of 2020, while the legislative staff shares the charge on the screen.

Representative Day notes the importance of reviewing the charge to ensure that we are meeting the tasks requested. Representative Day notes that the Chairs and legislative staff have lumped the charge into four broad topics out of those 12 specific charges that we thought would be helpful as a commission to have a discussion. Representative Day asks Jacqui Manning to share that outline on the screen.

The four broad topics outlined, along with the subcategories, are introduced by Representative Day.

Representative Day opens the meeting up for discussion in relation to the broad outline of the commission's charges to see if there are perspectives or thoughts on how we should move forward.

Representative Day recognizes Commissioner Kade Crockford.

Kade Crockford wonders if, given the commissions charge towards the end of the language to also consider the use of facial recognition to track people in public spaces, it might be useful to add something to this conversation about that use of the technology which is distinct from using the technology to perform image matching to identify someone in a still image.

Representative Day recognizes Commissioner Alicia Rebello-Paradas.

Commissioner Rebello-Paradas thanks Rep. Day and the legislative staff for their organization and work and seconds Commissioner Crockford's recommendation. Commissioner Rebello-Paradas wonders if one starting point should be getting the RMV or the state police to produce an FR search at the next meeting so everyone is starting from the same point and is able to see how research is conducted.

Representative Day recognizes Commissioner Farnsworth.

Commissioner Farnsworth echoes Commissioner Rebello-Paradas' suggestion. Commissioner Farnsworth notes, after being involved in law enforcement for many years, he believes there is a large gap between how Facial Recognition is used on TV shows and how it's actually used and employed in MA. Commissioner Farnsworth believes it may be appropriate to understand how it is used, and more importantly, how it is not used in Massachusetts.

This notion is seconded.

Representative Day notes that the chairs wanted to start from a common base of understanding, and the idea behind organizing the charge into buckets was to start with the history and find out what's been utilized here in Massachusetts. Representative Day believes that if the commission can come to a base knowledge of what Facial Recognition is, how it's used, what it looks like, and really get a fundamental grasp on that I think that would be particularly useful. Representative Day asks Commissioner Colleen Ogilvie, Registrar of Motor Vehicles, is this something that the Commission can task her with registrability of coming up with a presentation.

Commissioner Ogilvie agrees to put together a presentation for the next meeting.

Representative Day expresses interest in the Commissioners who are in this field as scholars to come forward to tell us what would be most useful as we start digging in here going forward,

here especially as the Commission is looking at the history and what the technology is and what it isn't. Representative Day recognizes Commissioner Learned Miller.

Commissioner Learned Miller notes that he has given quite a few tutorial talks on the basics of the technology and states that when people think it's the right time for something like that he would be happy to present.

Representative Day notes that the members are coming into this in different levels of expertise- some with very limited exposure to facial recognition and others obviously have devoted much of their professional lives to it. Representative Day airs on the side of over inclusion on what the commission is doing here so that everyone is able to get a base understanding. States that if the rest of the Commission agrees, that the Commission has a presentation from the RMV and a Dr. Lerner Miller at the next meeting to kind of get that fundamental base.

The notion is seconded.

Representative Day recognizes Commissioner John Woodward.

Commissioner Woodward proposes various organizations within the US government, such as the National Institute of Standards and Technology, which has done a great deal of work on facial recognition and I believes that some of their subject matter experts would be very useful to hear from. Commissioner Woodward notes names of potential presenters such as Jonathan Phillips or Patrick Grother of National Institute of Standards and Technology (NIST), Anil Jain at Michigan State University, and Dr. Michael King at Florida Institute of Technology and believes it would be beneficial for the Commission to really understand technical aspects of the technology because it will help us inform recommendations for policy making.

Representative Day recognizes Commissioner Dyson

Commissioner Dyson states that there are some concerns to be raised with regard to overview of face recognition technology software (outline item number 2) and potentially as it relates to outline item four with regard to the comparison of different facial recognition technologies. Commissioner Dyson believes it would be useful to also think about to what extent this state is actually working with third party vendors, data brokers, and other companies to basically contract out their services for use of this technology in those cases and that it would be helpful to be able to know who those might be and of course to see what auditing trails may be in existence for those technologies as well so that might be understood. Notes it should be on the record if it is not that for comparison of different local technologies that we should think about also the company we may be contracting out with to use those technologies that those are not owned by the Commonwealth

Representative Day recognizes Commissioner Hartzog

Commissioner Hartzog notes that one thing perhaps that was implicit within some of the concerns that are listed in Section 3 around privacy rights and due process rights but I do hope that we will be able to also discuss what might be considered downstream effects with facial recognition the way in which facial recognition and power is decision making systems and the way in which it is likely to be diploid and employment settings or to 2nd commissioner Crockfords proposal about thinking about privacy in public spaces as well that may not traditionally fall in what we think of as privacy rights to due process rights but certainly use personal information that have potential implications on our rights and protections so I just wanted to see if we could make that make sure that that was explicit as part of category three.

Representative Day recognizes Commissioner Brooks

Commissioner Brooks suggests also hearing from the Fusion center.

Representative Day notions Commissioner Brooks or Commissioner Range to explain what the Fusion Center is.

Commissioner Range acknowledges notion and explains the history of the Fusion Center.

- "Fusion center in Massachusetts was set up in 2004 after 911 and it was primarily focused on preventing acts of terrorism. Fusion Center in Massachusetts is one of the 80 recognized Fusion Centers across the country. Focused on all crimes & threats meaning it's not just specific to terrorism and the primary reason why is because a lot of it is based on behavior. Primary mission is focused on prevention and preventing acts or threats of violence and things like that from actually occurring. Fusion Center does use facial recognition- system is the RMV system. We've put some parameters in place to try and to ensure and we use it we're doing in a very thoughtful way is there"

Representative Day suggests that the RMV and State Police combine presentations for next meeting. Representative Day notes that it is sounding to me on this beginning piece that we've got two kind of threads here: 1. The real practice in Massachusetts which obviously is an element of charge- what the RMV does, how it utilized, what it is, and how the state police has been interacting with it. 2. Industry perspective that I think Commissioner Dyson was talking Representative Day notes that these are two kinds of united but distinct threads that we should be delving into here and wonders if the presentations can be fit into one meeting or should the presentations be broken up into two meetings.

Representative Day recognizes Commissioner Ogilvie.

Commissioner Ogilvie notes that depending on the amount of detail, the presentations could be completed in one meeting, and if more detail is needed we could continue in the future meeting.

Representative Day recognizes Commissioner Learned Miller

Commissioner Learned Miller states that there are two distinct goals: A working example which was one of the first things suggested. Commissioner Learned Miller believes it is a great idea there's nothing like having an example of how it's really used as structure for conversations. Notes that at the same time, clearly the Commission wants to consider all the ways it's used in the state and that's something that can be done over a longer period of time. Commissioner Learned Miller does not think it has to be done in the first meeting.

Representative Day recognizes Commissioner Brooks

Commissioner Brooks seconds the notion that the presentations can be completed in one meeting

Representative Day recognizes Commissioner Rogers

Commissioner Rogers notes one point he is interested in exploring is part of the third category on due processes and how facial recognition technology is playing out in criminal procedure and that it might be helpful to the Commission to understand how law enforcement use of this technology how it manifest in the courtroom and the rights of those accused.

Representative Day recognizes Commissioner Creem

Commissioner Creem notes concern about facial recognition issues raised in other forms of biometric rather than just facial recognition

Representative Day notes that there are many areas in the FR charge where we can go off track due to the expansive area of the topic, and notes that we will have to limit the scope of where our charge goes but does agree with Commissioner Creem that we are limited in respect to our report, but that does not mean we cannot go outside the scope of our charge to be informed about facial recognition technology in other ways.

Representative Day recognizes Commissioner Alicia Rebello Paradas

Commissioner Rebello Paradas notes back to Commissioner Rogers' comment about bucket three in relation to the different roles for law enforcement in the you know traditional state police, local, municipal police departments and then there might be a different role in facial recognition for the prosecutors office so I think it's just something to keep in mind that as you know we have this these buckets there's going to be even further smaller buckets and that just may be too much too far into the weeds and and something we just make note about in the report but everyone has a different role when it comes to the use of this technology and even how it's stored but that just might be beyond our charge but it's something just to keep in mind.

Representative Day recognizes Commissioner O'Keefe

Commissioner O'Keefe emphasizes the rights of the individual citizen but also the importance of using FR to enhance public safety. Seems there is a task of understand that the technology is a good thing but notes the concerns around its accuracy. Commissioner O'Keefe suggests the formation of subcommittees to break down the different charges.

Representative Day recognizes Commissioner Crockford

Commissioner Crockford wants to second Commissioner Rogers comment about the importance of looking at how facial recognition information makes its way into criminal cases, how information is shared with prosecutors and how prosecutors share that information with defendants. Commissioner Crockford think that's a really key question and given that looking at some of the due process issues is a charge of this. I just wanted to quickly address something that commissioner will keep just said you know in the civil rights and civil liberties community we are obviously very concerned about the tendency that many of these technologies have to be racially biased to work less well for frankly everyone except for middle aged white men unfortunately but that's not nearly the the full range of our concerns we also have significant concerns about the use of the technology to identify people in a variety of contexts where you know we think it would be inappropriate so just wanted to state for the record that that our concerns are not merely about accuracy or reliability they're also about you know frankly the power of a technology that essentially enables governments to identify someone who's just walking down the street minding their own business and is you know could be used in a way that could essentially you know translated to everyone walking around with their personal information tattooed on their face so just wanted to express that there may be a difference in in viewpoints on that particular.

Representative Day recognizes Commissioner Spurlock

Commissioner Spurlock seconds Commissioner Crockfords statement and does not think, at least from the criminal defense perspective, that the only or even the main problem with this technology is its accuracy that we also have serious concerns with the invasiveness of this technology. Believes it would be wrong to assume that we're all on the same page about that being the main problem here although it certainly is one that we should address as well.

Representative Day recognizes Commissioner Rogers

Commissioner Rogers respectfully pushes back at the notion that it's generally agreed that this technology is a good thing but there are concerns about reliability the reliability is 1 bucket but clearly the 4th amendment our freedom as American citizens to be free from unreasonable search and seizure the inherent rights to privacy and this technology has gotten ahead of the law the version of the bill that passed the law that is now law in the house as I'm sure people know how to warrant requirement and in the end a compromise was reached and so we're glad to have a new law on the books that put some constraints on the technology but it certainly does bring up significant concerns about if someone's been identified in this way they have a

right to know that they were right to challenge it in so I think we I think as part of the due process and within the charge of the Commission

Representative Day notes that there are no more questions or comments from Commissioners but notes that we should think about Commissioner O'Keefe's comments on the subcommittee to be discussed at the next meeting.

Senator Eldridge concurs that we revisit the creation of subcommittees at the next meeting

Representative Day recognizes Commissioner Ogilvie

Commissioner Ogilvie notes to establish subcommittees for the topics that will take the most time and research so those can be formed quickly

Representative Day motions to task everyone on the commission to do homework on what they believe would be the appropriate subcommittee or subcommittees and start to have that discussion prior to the next meeting so we hit the ground running. Representative Day also requests to give thought to particular presentations and reminds that the commission needs to be done well in advance of the report deadline so the report can be drafted and have the options for edits or comments. Representative Day asks members if there are any further comments or concerns on the next steps.

Commissioner Ogilvie wants to confirm the time for her presentation next week out of the hour and a half.

Commissioner Rebello Paradas flags that open meeting laws will also apply to subcommittees.

Representative Day notes that a discussion on this should be and the different interpretation on the requirements there

Commissioner Crockford notes an interest in making sure all other commissioners have a window into what's going on if we decide to go down the road of subcommittees in each subcommittee and the opportunity to participate.

Representative Day notes that the intent is to split up the work more than anything and then report back in a regular fashion and information would certainly be available as that work product is generated. Representative Day then recognizes the next steps for the commission is to ask Major Range and Registrar Ogilvie to pull together a presentation for us on the use and background of the technology in play here in Massachusetts right now and asks everyone to start thinking through what kind of data we need, what sources we want, and ask some of our professors here for recommendations on further presentations on the industry side of things.

Commissioner Woodward asks what is the best way to communicate these ideas?

Representative Day defers to legislative staff, who provide their email information in the chat on Microsoft Teams.

Representative Day recognizes Professor Learned Miller

Professor Learned Miller requests to confirm that he is presenting at the next meeting

The consensus is agreed that the next meeting, which is set for Friday, May 21 at 11 AM, will start with a presentation from the State Police/ RMV followed by a 30-minute presentation from Professor Learned-Miller.

Representative Day entertains a motion to adjourn with our next meeting being Friday, May 21 at 11:00 AM.

The motion is seconded

Representative Day motions for Senator Eldridge to speak to close the meeting